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RUEILB/NCTC WASHINGTON DC

C O N F I D E N T I A L SECTION 01 OF 03 MADRID 000505

SIPDIS

FOR EUR/WE'S ELAINE SAMSON AND STACIE ZERDECKI
FOR MARC NORMAN OF S/CT
FOR JANICE BELL OF INR
FOR MOLLY PHEE OF EMBASSY ROME
PASS TO ELIZABETH FARR OF NSC

E.O. 12958: DECL: 05/16/2019
TAGS: [PGOV](#) [PINS](#) [PTER](#) [KJUS](#) [SP](#)
SUBJECT: CORRECTED COPY: SPAIN: TECHNICALITY FREES 10 OF
14 DEFENDANTS IN "OP TIGRIS" TRIAL

REF: A. MADRID 261
[1](#)B. 08 MADRID 73
[1](#)C. 08 MADRID 1230

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Classified By: Acting Deputy Chief of Mission William H. Duncan for reasons 1.4 (b) and (d)

[1](#)1. (C) SUMMARY. The National Court on May 12 formally acquitted 10 of the 14 suspects in the "Operation Tigris" trial against an alleged cell of radical Islamists who were accused of financing Al-Qaeda, sending mujahedeen to Iraq for deadly suicide bombings, and helping several accomplices in the Madrid train bombings flee the country. The prosecution had sought between seven to 14 years of prison against the accused, but the judges ruled that key e-mail evidence against the defendants - which the USG had provided to the GOS, following an MLAT request - had been illegally obtained by the Spanish police and could not be used. Embassy contacts originally had expected a strong prosecution in this case due to the abundance of email evidence (See REF A), but these hopes were dashed when the Court on March 24 set free nine of the defendants. As the prosecution seeks to appeal the Tigris verdict, two other trials against alleged radical Islamist cells are scheduled to begin in the coming months. END SUMMARY.

//The Cell//

[1](#)2. (SBU) The cell, headquartered in the Barcelona suburb of Santa Coloma de Gramanet, was detained by Spanish authorities in June 2005 as part of Operation Tigris. Of the 32 suspects indicted by the National Court in mid-2007, prosecutors brought charges against 14, who allegedly recruited, indoctrinated, and facilitated the travel of jihadists. The cell -- allegedly part of Ansar Al Islam, which later rebranded itself as Al Qaeda in Iraq -- also reportedly helped six alleged jihadists (specifically, Mohamed Alfalah, Mohamed Belhadj, Daoud Ouhanne, Said Berraj, Otman el Mouhib, and Abdellilah Hriz) associated with the Madrid train bombings flee the country. The charges brought against the Tigris defendants included membership in or collaboration with a terrorist organization, falsifying documents, and drug trafficking. Spanish press reports acknowledge it is unclear how many jihadists the cell sent to Iraq, although El

Pais, Spain's left-of-center flagship daily, estimated the number at roughly 100.

//The Trial//

13. (C) Prosecutor Dolores "Lola" Delgado had asked for between 7-14 years for the Tigris defendants. The trial began on February 23, 2009 and the defendants shortly thereafter rejected an offer by Delgado to reduce their prospective sentences if they pled guilty. On March 12, Delgado withdrew terrorism charges against two of the then 14 defendants, one of whom was then released. The trial ended on March 13 and as the three-judge panel - comprised of Enrique Lopez, Fernando Garcia Nicolas, and Ricardo de Prada - deliberated over the verdict, it became apparent that the legal case had fallen apart when the National Court on March 24 set free nine of the defendants, including Kahled Abidi, a reported leader of the group. Media reports at the time speculated that the move reflected judgment that the likely amount of time that the defendants would actually be sentenced to was roughly equal to the amount of time already served. On May 12, the judges formally announced their verdict, which helped to explain their March 24 decision. The judges had ruled that key e-mail evidence against the defendants had been illegally obtained by the police and could not be used. (COMMENT: Post's FSN Legal Adviser on May 14 suggested to POLOFF that the procedural error on the GOS side was an example of the lack of attention to detail that Investigating Judge Baltasar Garzon is known for. END COMMENT). In any event, those sentenced were:

Kamal Ahbar and Samir Tahtah - Nine years of prison for affiliation with a terrorist organization

Mohamed El Idissi - Five years of prison for collaboration with a terrorist organization

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Hamed Hamu - Two years for forgery

14. (C) The Tigris verdict dealt harshly with the investigating judges, the police and the prosecutor. It sharply criticized the investigating judges for having done sloppy work, resulting in illegally obtained email evidence that violated the defendants' "fundamental rights." It questioned whether the CD-ROM of email evidence provided by the police actually contained the files referenced in the police report. Finally, the verdict slammed Delgado - whom Post notes inherited the case from previous prosecutors - for merely parroting accusations conveyed in the police report and not having proven any of the allegations. COMMENT: There has been no comment in the press that the CD-ROMs were provided by the USG, following a GOS MLAT request. Embassy Madrid LEGAT points out the procedural error was on the GOS side and there was nothing different that the USG could have done that would have impacted whether the evidence was admissible in a Spanish court. END COMMENT.

15. (U) The Tigris case was the fifth major trial in Spain against radical Islamist cells detained since 9/11. It followed the Operation Datil trial (against the original Al Qaeda in Spain cell) in 2005, the Comando Dixan trial (against an alleged plot to create homemade napalm) in 2007, the Madrid train bombers trial also in 2007, and the Operation Nova trial (a plot to truckbomb the National Court) in 2008. One recent Spanish press report points out that of the 89 defendants in those five trials, 47 have had their convictions upheld. A separate article states that, among all alleged radical Islamists tried in Spain in the past seven years, 84 of 132 or roughly two-third's have been convicted.

//Reaction and Appeal//

16. (C) Delgado on April 1 told POLOFF and Embassy Madrid's FSN Legal Adviser that the prosecution had been complicated by the fact that she had no administrative or paralegal support while each of the defendants had his own lawyer. She

also claimed that one of judges (whom she did not name) was unsympathetic to the charge that the defendants had sent jihadists to fight in Iraq because he believed that there was a war going on in Iraq at the time and it is not illegal to send people to fight in a war. When the verdict was released, Delgado publicly stated she would appeal it and on May 20 she privately told Embassy Madrid's LEGAT that the her appeal was due to Chief Prosecutor Javier Zaragoza later that same day. She said her appeal would challenge alleged procedural errors on the part of the judges. She explained that her appeal would not seek to include the emails but would challenge what she claimed was judicial bias in the case that prevented there from being a level playing field in the courtroom. Post does not have any information on when the appeal would take place, if Zaragoza decides to pursue it. Finally, Delgado also indicated that she would be available to meet with LEGAT at some point in the future to go over "Lessons Learned" from the Tigris trial, including how the investigation was handled and how the prosecution and trial were conducted. LEGAT indicates that he will use the opportunity to ask for more transparency in the Spanish investigations and will seek GOS concurrence to conduct more joint operations.

//Upcoming Trials Against Other Alleged Radical Islamist Cells//

17. (C) Two other trials of alleged radical Islamist cells are set to begin in the coming months. On May 14 the Spanish press reported that National Court prosecutors have asked for jail sentences ranging from 9 to 18 years in the upcoming trial for the 9 Pakistani and 2 Indian suspects arrested in January 2008 as part of Operation Cantata. The cell allegedly was plotting to attack the Barcelona metro system. (See REF B.) A spokesman for Tehrik e Taliban Pakistan (TTP), a Pakistani terrorist group with links to UBL, later claimed in a publicly released video that the suspects were operating on TTP's behalf and that the plot was a response to Spain's military presence in Afghanistan. Spanish press

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reports suggest the prosecution believes there is merit to the TTP's claim. The defendants have been accused of belonging to or cooperating with a terrorist organization, possessing explosives, and document forgery. Embassy Madrid LEGAT spoke briefly on May 20 with Vicente Gonzalez Mota, the prosecutor in the Cantata case, who said that the courts are aiming to begin the Cantata trial in July 2009.

18. (C) Meanwhile, Delgado's next case is a joint prosecution against the radical Islamists detained in January 2006 in the simultaneously executed Operations Chacal (See REF C for more details) and Camaleon, which took down cells in Barcelona and Madrid, respectively. The two cells, which had ties to each other and the Moroccan Islamic Combat Group, were also allegedly involved in recruiting, indoctrinating and sending "mujahedeens" to fight in Iraq under the banner of Ansar Al Islam, which then-leader Abu Musab Al Zarqawi later rebranded as Al Qaeda in Iraq. The Spanish media report that prosecutors are asking for 7-18 years for the nine indicated defendants for their alleged role in recruiting suicide bombers for Iraq and for their reported links to the 2003 Casablanca bombings and the 2004 assassination of Dutch filmmaker Theo Van Gogh. Omar Nakcha, the reputed chief of the Chacal cell, also reportedly played a role in helping alleged train bombers Alفالah, Belhadj, and Ouhanne flee the country. Another 11 suspects detained in those raids will not stand trial. Spanish press reports indicate that the prosecution in the Chacal/Camaleon trial will be based in part on email evidence, although Delgado has confirmed to Post's LEGAT that the case involves much more cooperation with the Italian government than with the USG. Delgado also told LEGAT that the Chacal/Camaleon trial - will likely begin in September 2009 and that the case is "a little clearer" than Tigris was.

DUNCAN